



BOARD OF COMMISSIONERS  
Russell Jeffries  
Margaret Shirrel, Ph D.  
Yohn Gideon  
Dennis Garmany  
Vincent Ferrante

7881 SANDHOLDT ROAD  
MOSS LANDING, CA 95039

TELEPHONE -- 831.633.5417  
FACSIMILE -- 831.633.4537

GENERAL MANAGER  
HARBORMASTER

Linda G. Horning, Esq.

March 28, 2003

The Honorable Terrence Duncan  
Presiding Judge, Superior Court  
County of Monterey  
P.O. Box 1819  
Salinas, CA 93902

Response by the Moss Landing Harbor District to Findings  
and Recommendations of the 2002 Civil Grand Jury Report

Dear Judge Duncan:

Enclosed please find the Moss Landing Harbor District's Responses to Findings and the Responses to Recommendations of the above captioned Civil Grand Jury Report.

Please feel free to contact the undersigned should you have any additional questions or require additional information.

Sincerely,  
MOSS LANDING HARBOR DISTRICT

Linda G. Horning, Esq.  
General Manager

LGH:kp

Encl: Responses to Findings of the 2002 Civil Grand Jury Report  
Responses to Recommendations of the 2002 Civil Grand Jury Report

C: Board of Harbor Commissioners

**RESPONSES TO THE FINDINGS**  
**OF THE**  
**2002 MONTEREY COUNTY CIVIL GRAND JURY FINAL REPORT**  
**MOSS LANDING HARBOR DISTRICT**

**1. The District's financial situation remains weak. It is still having to curtail expenses and draw down lines of credit to cover operating expenses, and some extension of debt payments has been necessary to meeting operating cash flow requirements.**

Response: The District would not characterize its financial condition as "weak", but rather, "the District's cash-flow is not as strong as the District would like." The District has some \$13.9 million in assets to its \$5.9 million in liabilities. With a 2 to 1 ratio, under few circumstances would such a financial statement be considered "weak". The current cash-flow crunch is primarily the result of numerous simultaneous construction projects, which are expected to reach completion in fiscal year 2003. This will result in income to the District to offset expenses incurred during construction. The District has seen significant improvement over the past year and as the new leases from these completed projects come on line, cash flow will improve. The District believes it is prudent business practice to curtail expenses or, in other words, exercise fiscal responsibility to the extent possible, even during times of plenty. With respect to the District's line of credit, there have been no draws in the last year. No extension of debt payment has been necessary to meet operating and cash flow requirements. Through prudent fiscal management, the District is able to meet its operating cash flow requirements from its income.

**2. Anticipated revenues from the leasing of the Cannery Building and from the RV Park should help to improve the District's weak financial condition.**

Response: Other than taking exception to the term "weak", District Officials agree with this Finding.

**3. Berthing Fees, although recently increased, are still only 70% - 75% of those charged at nearby harbors.**

Response: District Officials generally agree with this Finding. That being said, it must be noted that the Moss Landing Harbor is primarily a commercial fishing harbor with very old docks and infrastructure, set in an unincorporated county industrial area, situated some distance from conveniences and amenities, across from the Duke Energy power plant. By comparison, the Monterey Harbor is adjacent to the Fishermen's Wharf restaurants and shops, and is mere blocks from downtown Monterey's attractions. New docks were installed within the past 5 years. The harbor is an integral part of the City of Monterey which supports the harbor in many ways, not the least of which is in the form of fulltime police, fire protection and legal services. The Santa Cruz Harbor, our neighbor to the north, is similarly situated and supported. These nearby harbors cater to more recreational and pleasure craft than does the Moss Landing Harbor. The fishing industry is being severely restricted by state and federal regulatory actions and the District has done and will continue to do all in its power to keep berthing fee increases to a minimum.

**4. Approximately 18% of slip renters are delinquent in paying their berthing fees which costs the district over \$300,000 in lost revenue each year.**

Response: The majority of these delinquent accounts represents former slip holders and does not represent occupied slips that could be rented to paying customers. Under the District's new

management, the delinquency list has been reviewed, appropriate write-offs have been made, a number of accounts have been referred to collection, and the delinquency list continues to be closely monitored. An aggressive collection program has been implemented. Management has engaged the services of a maritime attorney to provide legal options available to the District by way of liens, possession, eviction and collection strategies.

**5. Abandoned vessels are taking up berths that could be used for paying customers and are costing the District money to keep them afloat. The procedure for disposing of abandoned vessels is complicated and costly.**

Response: District Officials agree that the procedure for disposing of abandoned vessels is complicated and costly, and agree that it does cost the District money and resources to keep any at-risk vessel afloat. However, very few abandoned vessels are taking up space on rentable slips. The District has a very shallow dock in close visibility to the Harbormaster's office on which most of the abandoned and at-risk vessels are berthed. This dock is not particularly suitable for active vessels unless they have very very shallow drafts. The other location for delinquent or abandoned vessels is a floating dock with no convenient means of access. Again, this dock would not be suitable for active vessels.

**6. Since most District funds come from berthing fees, the District has just two major sources for additional money: it can evict those who are not paying and/or increase berthing fees from those who are paying.**

Response: District Officials disagree with the Finding that the District has just two major sources of additional money. Several years ago, through long-range planning efforts, the Board of Harbor Commissioners had the wisdom and foresight to diversify the District's income stream by undertaking construction projects that would reduce the dependency on berthing fees alone. Unfortunately, construction projects tend to reduce cash-flow and increase debt service until the projects are completed and begin to realize rental income. The District understood that it would be going through some very tight financial times when it endeavored to diversify its income sources. The 2002 Grand Jury examined the District during the height of this metamorphosis. In December 2002 two occupancy permits were issued, construction was completed on two projects and rental income began to flow in. Although some additional funds would be realized from evicting those who are not paying, as the Grand Jury itself stated in Finding 5, "the procedure for eviction is complicated and costly", and the costs would no doubt offset the amount of the delinquency. Nevertheless, the District's new management has implemented an aggressive collection program and has sought advice of maritime counsel in order to exercise the most cost-effective, expedient remedies that may be available to the District in evicting those who are not paying.

**7. The increased regulation of fishing may adversely impact the District by reducing the income from the Cannery Building, and may decrease berthing fee collections if fishermen abandon their vessels in the berths. The effect on the District's revenues cannot be estimated at this time.**

Response: District Officials agree with this finding.

**RESPONSES TO THE RECOMMENDATIONS**  
**OF THE**  
**2002 MONTEREY COUNTY CIVIL GRAND JURY FINAL REPORT**  
**MOSS LANDING HARBOR DISTRICT**

**The Monterey County Civil Grand Jury made the following recommendations:**

**1. the District develop and follow a comprehensive, quantitative business plan (financial model) to serve as a master plan for running the District, encompassing both existing and potential sources and uses of funds and laying out the steps necessary to return the District to financial stability**

Response: Some years ago when the District Board undertook a number of diversifying construction projects and applied for grants to pay for the majority of such projects, a long-range plan (a "master plan" if you will) was implemented. The plan is essentially in place, and is reviewed at least once annually during Board workshops. Efforts will be made to better memorialize this "unwritten" plan. Further, the Harbors and Navigation Code requires that the District fix an annual budget in or about June of each year. During the budget process, which begins in March, a review of past and present, and projections for future, expenditures and income is analyzed. There is some uncertainty based on the regulatory climate and its impacts, if any, on the District's bottom line, so although a general "master plan" has been implemented, it would be misleading to create a false sense of security in a more specific plan, only to have new regulations undermine the foundation of the plan. The District knows why it is experiencing a thin financial condition and it is moving in the right direction to improve that condition.

**2. the District maximize its efforts to collect past-due rent, perhaps by contracting with a collection agency and/or hiring additional staff dedicated to collection.**

Response: See Response to finding No. 4. Also, it must be noted that many of those who own fishing vessels and whose accounts become past-due in a commercial fishing harbor are not typical consumers, the latter of whom may be more interested in maintaining a decent credit rating, in not being sued, and who have other assets or wages available to apply to their account. In a thorough analysis conducted by new harbor management, it has been determined that the best method is prevention and swift efforts when red flags appear, rather than attempting to collect essentially uncollectible accounts. One of the highest expenses of the District is personnel costs. Although in theory, it would be nice if an employee were able to pay for their salary, benefits and other employment expenses by collecting a sufficient amount to offset these expenses. In reality, given the history and financial condition of the majority of the debtors, offsetting such employment expenses with the amounts collected is highly unlikely. It should be noted that the few debtors who do have assets or other possible means of payment are being and will be pursued by collection agency or other action.

**3. the District start an aggressive program of moving abandoned vessels to dry storage or other non-revenue locations so that the berths can then be rented to paying customers.**

Response: First, as observed by the Grand Jury in Finding No. 5, "the procedure for disposing of abandoned boats is complicated and costly." Second, there are only approximately 12 to 15 abandoned vessels in the Harbor. Third, as explained in Response to Finding No. 5, very few of these vessels are occupying rentable slips. The District's Dry Storage is revenue producing. The

District does not have any suitable locations that are non-revenue producing to store abandoned vessels. Furthermore, the actions of the District with regard to abandoned vessels must comply with law. If it is unlawful to remove a vessel from navigable waters, then the District will not do so. Nevertheless, as a part of its review, analysis and collection efforts, management has engaged the services of a maritime attorney to provide legal options available to the District to remedy this problem.

**4. the District enforce the procedure in Ordinance [Code] § 6.028, Termination or Revocation of Berthing Permit and Removal of Vessel, and set a goal of having the fees paid or the vessel moved in 120 days.**

Response: As anyone involved in business contracts or the legal profession knows, the remedies for violating an ordinance code or to terminate an agreement based on breach can be very costly. In each instance, the District must weigh the costs of legal fees, court costs and employee resources against other less costly remedies that may be available, even though the latter may take longer or allow the vessel to remain in the harbor. The budgeted amount allocated to legal fees must be considered. Most things can be cured with money, and if the District had unlimited legal funds, the majority of violations of the ordinance code or breaches of agreements would be referred to legal counsel. However, as the Grand Jury Report observes, the District is experiencing lean financial times, requiring more scrutiny and strategy to enforcement efforts. Nevertheless, rest assured that the District is aware of the cost of delinquencies, and the District recognizes that this issue was placed too long as a low-priority. Despite the many other pressing matters requiring attention in order to operate the harbor, new management has made enforcement a higher priority, and anticipates streamlining the process even further in the coming year.

**5. the District raise berthing fees to the going rate in nearby harbors.**

Response: Please see Response to Finding No. 3: "...it must be noted that the Moss Landing Harbor is primarily a commercial fishing harbor with very old docks and infrastructure, set in an unincorporated county industrial area, situated some distance from conveniences and amenities, across from the Duke Energy power plant. By comparison, the Monterey Harbor is adjacent to the Fishermen's Wharf restaurants and shops, and is mere blocks from downtown Monterey's attractions. New docks were installed within the past 5 to 7 years. The harbor is an integral part of the City of Monterey which supports the harbor in many ways, not the least of which is in the form of fulltime police and fire protection. The Santa Cruz Harbor, our neighbor to the north, is similarly situated and supported. These nearby harbors cater to more recreational and pleasure craft than does the Moss Landing Harbor. The fishing industry is being severely restricted by state and federal regulatory actions and the District has done and will continue to do all in its power to keep berthing fee increases to a minimum."

**6. the District expedite the leasing of the Cannery Building to full occupancy by the end of this fiscal year by working with the appropriate county departments in the acquisition of use and occupancy permits.**

Response: The Grand Jury must have misunderstood the District's explanation as to why there was a delay in renting or occupying the Santa Cruz Cannery Building, and what efforts staff was applying to expedite occupancy permits: the County of Monterey Planning and Building Department is responsible for issuing building permits, implementing construction inspections, and issuing occupancy permits. From the inception of the Santa Cruz Cannery Building renovation project, District staff has worked diligently with County staff in acquiring permits, arranging inspections, and securing occupancy permits. The District had grant and general funds on the line

during this multi-million dollar project. The District's goal from day one was to complete a top line fish processing and office building, with a state-of-the-art adjacent dock facility. These are not simple tasks. There was a time when County staff surprised District staff with additional, costly requirements before the County would issue a partial occupancy permit enabling three fish processing tenants to occupy a portion of the building. This caused delay and added expense. However, Through the dedicated efforts of both County and District staff, the full occupancy permit for both the Santa Cruz Cannery Building as well as the state-of-the-art K-Dock project have now been issued. The County's involvement is finished. As for expediting leasing, the building is 80% occupied with paying lessees. Although the national economy and state economy are not favorable at this time, the District is diligently pursuing full occupancy of the building. The District is very well aware that income producing efforts are crucial to its financial improvement.

**7. the Board reduce its pay to zero (except reimbursement of necessary expenses) and serve as volunteers until such time as the District is able to meet its debt service obligations and stay current in its annual contributions to meet reserve requirements.**

Response: First, the District *is* able to meet its debt service. And although it is true that the District has not contributed self-imposed amounts into certain reserve funds, such as the dredge reserve fund, this has not precluded the District from conducting and paying for its necessary maintenance dredging. Second, the Moss Landing Harbor District is the largest single district in Monterey County – larger than any supervisorial district – and the Moss Landing Harbor District Board is equivalent to a City Council in terms of the magnitude of its responsibilities. A stipend of \$100 per meeting with no benefits is fairly minimal compared to that of city council members. Third, five Board members receiving \$100 each per meeting attended on behalf of the District amounts to \$500 per month or \$6,000 per year minimum. To forego this nominal stipend after some dedicated commissioners have served on the Board for over 10 years would be largely a symbolic gesture, and contribute very little to building the reserve accounts. Nevertheless, during the District's annual budget process, the Commissioner's stipends are reviewed and can be adjusted if deemed appropriate under the circumstances.